

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX REFERENCE NO. 343 OF 1997.

The Commissioner of Income-tax ... Applicant.

V/s.

M/s Patron Civil Engg. Ltd

.. Respondent.

Shri Parag Vyas with Shri Ashok Kotangale and
A.S. Rao for the applicant.

Shri Vipul Joshi for the respondent.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 17.10.2005.

P.C. :

. By this reference under section 256(1) of the Income tax Act, 1961, the Income Tax Appellate Tribunal has referred the following substantial question of law for the opinion of this Court:

. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in granting the investment allowance under section 32A(2) of the Income Tax Act, 1961 when the assessee is engaged in the business of construction.?"

. Learned Counsel for the parties agreed that the above question is already answered by the Apex Court in the case of **C.I.T. vs. N.C. Budharaja & Co.** reported in **(1993) 204 ITR 412(SC)**, in the negative i.e. in favour of the revenue and against the assessee. In this view of the matter, we answer the question in the negative i.e. in favour of the revenue and against the assessee.

. Reference accordingly stands disposed of

with no order as to costs.

(J.P. DEVADHAR,J.)

(V.C. DAGA,J.)